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10/816,427	03/31/2004	Paul Buchheit	060963-5008US	8813

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EXAMINER

STRANGE, AARON N

ART UNIT	PAPER NUMBER
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2448

NOTIFICATION DATE	DELIVERY MODE
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12/02/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Response to Amendment

1. The declaration filed on 11/12/2009 under 37 CFR 1.131 has not been entered, since Applicant failed to provide a showing of good and sufficient reasons why the declaration is necessary and was not earlier presented. See 37 C.F.R. § 1.0116(e).
2. However, as a courtesy to Applicant and in an effort to expedite prosecution, the Examiner notes the following deficiencies with the declaration. These deficiencies are not necessarily comprehensive, but are intended to assist Applicant to provide the necessary showings required to overcome the Moody and Durazo references.
3. It appears that Applicant intends to show invention of the claimed matter prior to the December 29, 2003 filing date of Moody et al. (US 2005/0144157) and the July 1, 2003 effective filing date of Durazo et al. (US 2005/0004990), by showing actual reduction to practice prior to June 22, 2003.

I. Reduction to Practice

4. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date (July 1, 2003) of the Durazo et al. reference or the effective date (December 29, 2003) of the Moody et al. reference. Proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose.

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5. The declaration and exhibits submitted by Applicant must clearly explain which facts or data Applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what exhibits describe along with a general assertion that the exhibits describe a reduction to practice “amounts to essentially a mere pleading, unsupported by proof or a showing of the facts”, and, thus, does not satisfy the requirements of 37 CFR 1.131(b). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied upon by Applicant. (See MPEP §715.07).

6. With regard to the Appendix A (referred to as Exhibit A in the declarations), the web page shown is described as a "mock-up" (Declaration of Paul T. Bunchheit, §3), which does not appear to be a working implementation of the invention. It appears that the document in Appendix A may be relevant evidence of conception, but it is insufficient to show actual reduction to practice.

Appendix B (referred to as Exhibit A in the declarations) appears to be provided solely as evidence of the date associated with Appendix A. While this does appear to show that a web page bearing the same name as the web page in Appendix A existed on September 19, 2002, it is insufficient to show that the claimed invention actually existed, since the document in Appendix A is insufficient evidence of actual reduction to practice.

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7. Additionally, it is noted that the claimed invention contains limitations directed to operations such as "receiving a search query" and "identifying conversations relevant to the search query". Appendix A does not appear to show that the list of conversations we generated in response to a search query used to identify relevant conversations.

Therefore, the proffered evidence is not commensurate in scope with the claims and is insufficient to show actual reduction to practice of the claimed invention.

8. It should also be noted that the same evidence sufficient for a constructive reduction to practice may be insufficient to establish an actual reduction to practice, which requires a showing of the invention in a physical or tangible form. For an actual reduction to practice, the invention must have been sufficiently tested to demonstrate that it will work for its intended purpose. A process is reduced to practice when it is successfully performed. (See MPEP § 2138.05).

Applicant has failed to provide any evidence of testing which shows that the invention was complete and worked for its intended purpose or any evidence which shows that the claimed method was actually performed prior to the effective date (July 1, 2003) of the Durazo et al. reference or the effective date (December 29, 2003) of the Moody et al. reference.

9. For at least the reasons cited above, the declaration and exhibits are inadequate to establish actual reduction to practice prior to July 1, 2003 or December 29, 2003.